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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SHOP IRONWORKERS LOCAL 790,
PENSION PLAN, et al.,

Plaintiffs,

vs.

RUSSELL ZAPPETINI, et al.

Defendants.

CASE NO.15-1038 VC

**DECLARATION IN
OPPOSITION TO
PLAINTIFFS MOTION
FOR SUMMARY
JUDGEMENT**

I, David J. Zappetini, declare:

1. I am a defendant in this action and I know the following facts to be true of my own knowledge, and if stated on information and belief I believe them to be true.

2. I have always appeared in this case without counsel because I have no funds for an attorney. Several have tried to help me pro bono to get resolution of this case, but the Plaintiff was not interested because I could not pay them money I did not have. My brother Russell is a defendant, but he too has nothing, and a judgment was taken against him. We had owned my father's and

1 grandfather's iron works shop, which started in business as a blacksmith shop over 100 years ago. We
2 have been a union shop since then, up until the 2008 recession, from which we never recovered.

3 3. Our company, Steve Zappetini & Son, Inc. (the Company) then left the Union after it
4 canceled the contract and then never resumed bargaining. It was a difficult time for all, for businesses,
5 and, the Union pension plan had its own severe problems and losses. In the process, some payments
6 to the Union were alleged to have been missed. Since the Company had little money and many liens
7 by the tax authorities, suppliers and the Union, the Company filed for Chapter 11 and spent whatever
8 money it had, including the use of personal funds from me, to pay a bankruptcy attorney and to pay
9 the bankruptcy trustee - and to try to reach an arrangement where I could continue to try to pay my
10 debts at a reduced amount. After almost a year of working out a deal with the Union, and making
11 payments that included funds that would go to the Pension Fund of the Union, in addition to the
12 Union part of the Union, the Company was about to start making the payments to the Union (SHOP
13 IRONWORKERS LOCAL 790) and to Pension Fund (SHOP IRONWORKERS LOCAL 790,
14 PENSION PLAN.) These two entities are housed together, are related to each other, etc.

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16 4. Then, the SHOP IRONWORKERS LOCAL 790, PENSION PLAN decided to file suit
17 against me personally for the alleged indebtedness (the same unfunded liability claim), despite
18 knowing that I had no money, and that I was putting everything into trying to pay the SHOP
19 IRONWORKERS LOCAL 790, and SHOP IRONWORKERS LOCAL 790, PENSION PLAN in the
20 context of the Chapter 11 for the Company, as well as trying to pay the IRS and Franchise Tax Board
21 and banks, etc. They knew that I was on a cash payment only arrangement with suppliers, and that
22 my brother Russell had nothing following a recent divorce. All he owned when the claimed liability
23 started was half of the ironworks shop in San Rafael (now mine), which is mortgaged to the hilt, and
24 has hazardous wastes after 100 years of blacksmithing and ironworks.

1 5. I was told that the SHOP IRONWORKERS LOCAL 790, PENSION PLAN had sent me
2 some notice about a bill for the pension fund (SHOP IRONWORKERS LOCAL 790, PENSION
3 PLAN.) I learned of this during the Chapter 11 proceedings. I have no recollection of receiving any
4 such notice at my shop (Company), therefore I never contested the amount of the claim at that time. I
5 am told that I therefore could/cannot raise any defense to their claims.

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7 6. I went to my deposition in this case with no attorney. I brought all my books and opened
8 them for the Union Pension Plan lawyers. I showed them that everything I had was subject to a lien,
9 and that I understood that the Taxing Authorities had priority to get their taxes paid, and the mortgage
10 holders of those few properties I still had left have the right to repossess all the property. All of my
11 equity in anything I own is already pledged to the IRS and other creditors, particularly banks. When
12 the Pension Fund attorneys had any questions about a possible asset they could take, or whether
13 money could be this place or that place, I answered every question - under penalty of perjury - so that
14 it was clear there was nothing more anywhere. While the Union may have some type of priority for a
15 part of their claim in theory, I do not know how they get ahead of the IRS and the bank repossessions.

16 7. I told the SHOP IRONWORKERS LOCAL 790, PENSION PLAN, and the SHOP
17 IRONWORKERS LOCAL 790, that if they won this Motion for Summary Judgment I would have to
18 file a chapter 7 *personally*, and I would have to convert from a Chapter 11 to a Chapter 7 *for the*
19 *Company*. In that case, I understand that the Union (not the pension plan arm of the Union) would
20 lose all the money that was committed to them in the Company's Chapter 11, and the Pension Fund
21 arm of the Union would lose the money it would have gotten from the Chapter 11 of the Company,
22 and now the Union arm and the Pension Plan arm of the Union will get nothing at all in the Chapter 7s
23 (personal and Company) because those with more priority will take all those assets, i.e., the IRS and
24 the bank repossessions. Then, the shop will go out of business and there will be no cash flow to pay
25 anyone, and the Bank will take the ironworks shop and everything else that is highly mortgaged. The
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1 only thing that was getting anyone paid, was my continued work at the ironworks shop, and that will
2 end with the sale of the shop by my creditors, when the Chapter 11 is converted to a Chapter 7.

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4 8. I even sent letters to the Trustees to ask them what they were doing, and why would they
5 do something that would result in their union members losing everything that I could pay them (and
6 the possibility that I could make more money in the future in the Chapter 11 for the Company) - when
7 they had all of my documents (and whatever else they subpoenaed) that showed clearly that I had no
8 other money and everyone else had priority over them? Why were they wasting attorney's fees and
9 putting me out of business so that I could never pay the Union arm of the Union and the Pension Fund
10 arm of the Union, what I had agreed to pay in the Chapter 11? My promises in the Chapter 11 for the
11 Company meant that I would have to keep working and working at my advanced age in order to try to
12 pay my debts like a good citizen. None of the Trustees responded. I even offered to pay the Pension
13 Fund of the Union \$20,000 that some old friends gathered for me (if that amount would work) since
14 no bank will give me any money; and to pay the Union the Trustee's fees for a while instead of paying
15 the Trustee once the Chapter 11 did not need a Trustee. That was rejected. So now there is nothing.

16 8. I cannot afford an attorney to tell me if I had or have a better defense to provide. And,
17 while I cannot dispute that the pension fund is owed money, I do not know if the calculations were
18 accurate. Even if they are accurate, I cannot pay them.

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20 9. I feel that this is all wrong. I have tried my entire life to pay my bills, be a good employer
21 and businessman, and was prepared to work till age 75 to try to meet my obligations.

22 10. I could not file this earlier, and had to ask an attorney friend to help, since I did not have
23 the ability to file it with the court's e-file system, and the website said I had to first file a motion to get
24 the Court's permission to e-file (it was for a hearing the next day), and the telephone number I was
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8. I cannot afford an attorney to tell me if I had or have a better defense to provide. And, while I cannot dispute that the pension fund is owed money, I do not know if the calculations were accurate. Even if they are accurate, I cannot pay them.

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told to call for help said they would get back to me in two days.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 20 day of April, 2016.


David Zappetini